

MEMORANDUM OF LAW

DATE: August 20, 1992

TO: Director, Park and Recreation Department

FROM: City Attorney

SUBJECT: Proposed Modifications to Charter Section 55

As you know, the City Council recently directed that certain proposed changes to Charter Section 55 be placed before the voters on the November ballot. When the Council was considering the proposed amendments, certain questions were raised by members of the public regarding the effect of the changes. You have asked for our comments with regard to two of the issues.

1. You have asked the meaning of the phrase "or dedicated open space" which is contained in the following sentence:

The dedication, setting aside
or development of new non-park roads
through dedicated parks or dedicated
open space shall require prior
approval by a majority vote of the
qualified electors of the City voting
at an election for such purpose.

In our opinion the phrase "dedicated open space" means property which is in a generally natural undeveloped condition owned in fee by the City which has been formally dedicated in perpetuity by ordinance of the Council for park and recreation purposes. Our conclusion is based upon the language in paragraph 2 of Section 55.

In our opinion, the phrase "dedicated open space" taken in the context of Charter Section 55 read as a whole, does not include property which is subject to an open space easement but which is not owned in fee by the City. It also does not include property which is owned in fee by the City and is subject to an open space easement but which property has not been dedicated by ordinance to park and recreation purposes. In addition, it does not include property owned by the City which has been merely "designated" for open space purposes.

Within the context of Charter Section 55 we conclude that

the word "dedicated" is limited to property "formally dedicated in perpetuity by ordinance of the Council."

2. The other issue is whether a two-thirds vote of the City Council would be required under the proposed amended language in order for the City to create new park roads. This issue arises out of the following paragraph in the proposed amended section:

Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may, by a two-thirds vote of the Council, without a vote of the people, authorize the realignment or widening of existing streets through or adjacent to dedicated park land to protect the public health or safety.

Having participated in the various discussions of the task force, Park and Recreation Board and the City Council, our conclusion is that the above paragraph relates solely and exclusively to the realignment or widening of "non-park roads" as defined in the proposed revised Charter section.

Our conclusion is based upon both the discussions which led up to the language as well as the fact that the basic provision of Charter Section 55 is that dedicated park lands may be used for any park and recreation purpose. A road needed to service a park facility is certainly a park purpose. No extraordinary vote is needed to construct bona fide park uses or bona fide park facilities. (This conclusion is, of course, qualified by the requirements of Charter Section 55.1 relating to restrictions upon commercial development.) The establishment of roads and rights-of-way within parks for the primary purpose of allowing park visitors to access park facilities will, therefore, require only a majority vote of the City Council in the event the proposed Charter amendment is approved by the voters.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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